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**BELLSOUTH**

**Mary L. Henze**  
Assistant Director-Policy Analysis

April 4, 1997

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Ex Parte

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW, Room 222  
Washington, DC 20554

**RECEIVED**

**APR 4 1997**

Federal Communications Commission  
Office of Secretary

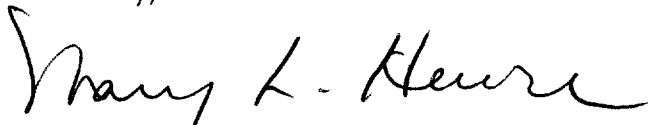
Re: Federal-State Joint Board on Universal Service, CC Dkt No. 96-45

Dear Mr. Caton:

Today, the attached letter was delivered by the undersigned on behalf of Ameritech, BellSouth, GTE, SBC, and US West to the office of Common Carrier Bureau Chief Keeney in connection with the above referenced proceeding.

Please call me if you have any questions.

Sincerely,



Mary L. Henze  
Assistant Director - Policy Analysis

Attachment

cc: R. Keeney  
M. Nadel  
I. Flannery  
D. Law  
C. Punderson  
R. Hood

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April 3, 1997

Regina Keeney  
Chief, Common Carrier Bureau  
Federal Communications Commission  
1919 M Street  
Washington, D.C. 20554

Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45;  
Education and Library Issues

Dear Ms. Keeney:

On behalf of Ameritech, BellSouth, GTE, SBC (including the former Pacific Telesis Group) and U S WEST, we write to follow up on our *ex parte* meeting with the Universal Service Branch last month, and to provide further support for our recent comments on the education aspects of the *Federal-State Joint Board Recommendation on Universal Service*, CC Docket No. 96-45. We make the following points:

- The Commission should allow carriers to determine the lowest corresponding price ("LCP") -- the pre-discount price -- based on a consideration of factors normally used in determining prices within a competitive market;
- The Commission should require that any consortium whose members are eligible to make use of universal service fund discounts designate a lead member which shall be responsible for assuring that ineligible users do not receive discount benefits, allocating the correct discount percentage to each member, and performing recordkeeping duties; and should not adopt the Joint Board recommendation that carriers assume these responsibilities;
- Schools and libraries should not be required to re-bid existing contracts, and there should be no "fresh look" at such contracts. Most contracts carriers have with schools contain early termination provisions that would make a fresh look unnecessary;
- There is a need for clarity from the FCC with regard to how the federal universal service program will mesh with the education aspects of state universal service programs, as well as state discounts and special rates for education.

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Regina Keeney  
Chief, Common Carrier Bureau  
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*1. Lowest Corresponding Price*

The FCC should allow carriers flexibility in determining the LCP applicable in a particular situation. In determining the LCP, carriers should be allowed to consider factors they would normally rely on in determining -- and differentiating -- prices within a competitive market. Factors such as the duration of the contract, the volume of services, distances involved, geography served and the type of services would cause a reasonable carrier to make price distinctions among commercial customers. Absent consideration of these factors, the use of an LCP is inappropriate. In this regard, we propose a rule that states the following:

In determining the LCP, carriers may consider factors normally relied upon in determining prices within a competitive market. A carrier shall not be required to set the LCP based on prices it charges to other users if those prices are based on materially different factors, such as contract terms, volume, distance, geography, types of service, or other cost-affecting factors, from the terms, volume, distance coverage, geographic coverage, or type of service desired by an eligible school or library.

In addition, the Commission should clarify that certain short-term pricing events, such as promotional offerings, can be excluded from those prices which are relevant to a determination of the LCP. While schools and libraries should be able to benefit from promotional rates during the period they are offered, these prices are generally not available or sustainable beyond the promotional period and should not be used as the basis for establishing the LCP-based price beyond the length of the promotional offering.

The Commission should also specify that the LCP is to be determined based upon prices charged for similar services to non-residential customers other than schools and libraries. This is the only way to ensure that schools and libraries can benefit from below-LCP prices. Without this clarification, carriers will avoid offering below-LCP prices because doing so would automatically establish a new, lower LCP and create a perpetual downward "death spiral" in prices regardless of the carrier's costs. In this regard, we propose a rule that states the following:

In determining the LCP, carriers shall consider only prices for similar services offered under similar circumstances to similarly situated non-residential customers that are not eligible schools or libraries. In addition, when determining the LCP carriers may, but are not required to, take into account prices offered during short-term, special pricing events such as promotional offerings or one-time regulatory actions.

Regina Keeney  
Chief, Common Carrier Bureau  
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2. *Consortia*

We support the Joint Board's recommendation to allow eligible entities to form consortia with other eligible as well as non-eligible entities in order to take advantage of lower prices that come from aggregation. However, we believe the consortia themselves, and not carriers, should be responsible for assuring that ineligible users do not receive discount benefits, for allocating the correct discount percentage to each member, and for performing recordkeeping duties.

We believe that existing consortia formed to purchase telecommunications services typically have a *lead member*. This lead member generally functions as the point of contact with carriers for contract negotiations and billing issues. We believe the lead member should also serve as the party responsible for the universal service allocation and recordkeeping tasks we detail above.

In this regard, we propose the following rule:

Any consortium applying for universal service fund discounts shall designate a lead member in all communications with carriers and the Commission. The lead member will become the entity legally responsible for appropriate recordkeeping and administration to ensure that only eligible entities within the consortium receive universal discounts. The lead member shall also be the party that responds to any audit that becomes necessary. Carriers furnishing telecommunications services to a consortium shall bear no responsibility for these recordkeeping and administrative duties.

Carriers currently do not track, and do not generally have the systems in place to track, usage of services purchased by individual members within a consortium. In addition, carriers do not know the relationships among individual consortium members. As a result, carriers are not in a position to identify services used by eligible entities or to ensure that discounts are appropriately allocated. Thus, it does not make sense to place responsibility for recordkeeping and allocation of discounts on carriers; only the consortium itself, or the lead consortium member, can play this role.

Regina Keeney  
Chief, Common Carrier Bureau  
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There are several other issues related to application of discounts to consortia which the Commission needs to clarify. In this regard, we propose a rule that states the following:

Since a school or library that joins a consortium is taking advantage of a competitive rate that is a result of negotiations between the consortium and the service provider, that already established consortium rate shall automatically be considered the pre-discount rate. Carriers providing service to schools/libraries within a consortium need not take additional steps to determine or certify that the consortium rate meets the LCP requirements.

Eligible schools/libraries participating in a consortium shall receive discounts only on services defined by the Commission to be eligible for universal service support. Discounts do not apply to any other charges that a school/library may incur by participating in the consortium, such as administrative charges applied by the consortium to individual members or charges for managed services.

### *3. Existing Contracts*

We agree with the Joint Board's recommendation that contracts for existing services need not be re-bid to take advantage of the educational discounts. We disagree with those commenters who propose a "fresh look" for school or library services under contract.

Existing services for schools and libraries are provided either under tariff or under contract. In either case schools and libraries will receive the appropriate federal discounts. If schools and libraries wish to re-bid contracts for services which they currently receive, they are generally not foreclosed from that option. Many telecommunications services obtained under state tariffs are cancelable at any time without penalty. Some tariffs and most contracts, however, provide for termination charges should a contract be canceled prior to the end of the specified term. Those termination charges are designed to protect the carrier for recovery of investment specific to the account.

Mandating that all schools and libraries re-bid their existing service arrangements upon enactment before they can receive discounts puts an unnecessary burden on schools or libraries for what may prove to be minimal or non-existent savings in many cases. Where it is appropriate or in the best interest of schools or libraries to re-bid, the early termination provisions give them this option.

Regina Keeney  
Chief, Common Carrier Bureau  
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4. *Interplay Between Federal and State Programs*

The Commission should promulgate rules applicable when a state already has in place, or enacts in the future, a universal service program, educational discounts, or special rates for education. Those rules should clarify, for example, how the federal universal service discounts will mesh with existing or later promulgated state universal service education discounts. Without such clarification, the states, and carriers in those states, will not know how to operate, and comply with, state programs in a manner that is consistent with the program this Commission adopts.

We appreciate your attention to our concerns.

Respectfully yours,

*Marvin Bailey / by SRT*

Marvin Bailey  
Ameritech

*Scott Randolph / by SRT*

Scott Randolph  
GTE

*BB Nugent / by SRT*

BB Nugent  
U S WEST

*Robert Blau / by SRT*

Robert Blau  
BellSouth

*Steve Melnikoff / by SRT*

Steve Melnikoff  
SRC Communications

cc: Mark S. Nadel (Universal Service Branch)  
Irene Flannery (Universal Service Branch)  
Diane Law (Universal Service Branch)  
Constance Punderson (Accounting and Audits Division)  
Robert Hood (Accounting and Audits Division)